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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/073,942	02/14/2002	Matthew D. Putnam	09531-075001	1734

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EXAMINER

REIP, DAVID OWEN

ART UNIT PAPER NUMBER

3733

DATE MAILED: 01/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/073,942	<b>Applicant(s)</b> PUTNAM ET AL.	
	<b>Examiner</b> David O. Reip	<b>Art Unit</b> 3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 27 October 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) 9-25,28-32,35,36 and 39 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 34 and 37 is/are allowed.
- 6) ☒ Claim(s) 1-8,33 and 38 is/are rejected.
- 7) ☒ Claim(s) 26, 27 and 40 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input checked="" type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

***Election/Restrictions***

Applicant's comments in the reply filed 10/27/05 regarding the examiner's additional withdrawal of claim 9-14, 28, 29, and 36 are acknowledged. The apparent traversal is on the ground(s) that the additional claims withdrawn by the examiner as not reading on the elected species of invention are, instead, consistent with the elected species. This is not found persuasive because the applicant cites to page 16 of the specification, which states, "any and all of the techniques and devices related to fixation plates described above can be applied to the distal radius volar fixation plate 700." While such may be true for plate embodiment 700, this embodiment has not been elected. Applicant is reminded of their election without traverse of plate species 6 (Fig. 68, plate 800) in combination with articulating tine species 1 (Fig. 48) and tensioning device species 1 (Fig. 31).

The requirement is still deemed proper and is therefore made FINAL.

It is further noted that claim 30 depends from withdrawn claim 28 and should have been withdrawn in the first Office action mailed 4/25/06. Accordingly, claim 30 is additionally withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species of invention.

***Terminal Disclaimer***

The terminal disclaimer filed on 10/27/05 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of U.S. Pat. No. 6,755,831 has been reviewed and is accepted. The terminal disclaimer has been recorded.

***Response to Amendment***

The declaration filed on 10/27/05 under 37 CFR 1.131 is sufficient to overcome the Orbay '135 reference as applied against the instant claims that are drawn to the tine being configured as an articulating member, since the articulating tine embodiment disclosed in Orbay '135 has an effective filing date of December 12, 2000. However, claims 1-8, 33 and 38 are sufficiently broad so as to read on the fixed tine embodiment of Orbay '135 as seen in Figs. 2-9, such embodiment having an effective filing date of February 1, 2000 (see parent U.S. Pat. No. 6,358,250). Therefore, the declaration is insufficient to overcome the embodiment(s) of Orbay '135 having an effective filing date of February 1, 2000.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the

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applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-8, 33 and 38 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Orbay (U.S. Pat. No. 6,440,135). Figs. 2-9 of Orbay clearly show a fixation plate kit and method of repairing a distal radius fracture having all the limitations as recited the above listed claims, including: an angled, T-shaped plate 102 configured for placement against the volar surface of the distal radius; tensioning devices 104; and tines 108.

***Allowable Subject Matter***

Claims 34 and 37 are allowed.

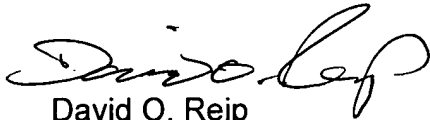
Claims 26, 27 and 40 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David O. Reip whose telephone number is 571-272-4702. The examiner can normally be reached on 7 A.M.- 4:30 P.M. Mon-Thu and every other Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "David O. Reip". The signature is fluid and cursive, with the first name "David" being more prominent and the last name "Reip" following in a similar style.

David O. Reip  
Primary Examiner  
AU 3733